IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 25355 of 2003

Between:

P.Mohan Reddy S/o. Lingareddy
R/o. 1-3-48, Premnagar, Kamareddy, Nizamabad District

... PETITIONER

AND

1 APSRTC, Rept.by its Managing Director, Musheerabad, Hyderabad
2 The personnel officer, APSRTC, O/o. Regional Manager Office, (NR), Nizamabad
3 The Depot Manager, APSRTC, Bus Depot, kamareddy, Nizamabad District

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ or direction particularly one in the nature of writ of Mandamus declaring the impugned proceeding No.E2/684/(1)/03-RM: NZB dated 21-05-2003 and consequential action of the respondents in not allowing him to discharge his duties and not passing any order on it, as illegal, unjust and without jurisdiction and in violation of principles of natural justice.

Counsel for the Petitioner: MR.V.NARASIMHA GOUD

Counsel for the Respondents: Mr. V.J.M.PRASAD SC FOR APSRTC

The Court made the following:

ORDER:

Declaring the proceedings No.E2/684(1)/03-RM:NZB, dated 21-05-2003 issued by the second respondent-Personnel Officer, Nizamabad, and consequential action of the respondents in not allowing the petitioner to discharge his duties as illegal and arbitrary, the present writ petition is filed.

The brief facts that are necessary for disposal of the present writ petition are as follows:

The petitioner submits that he was appointed in the respondent's Corporation as a Conductor on 20-07-1993 through due process of selection. Thereafter, on the ground of an allegation that he involved in a criminal case, he was not allowed for duty with effect from 10-03-2000 and informed that he would be allowed for the duty only after disposal of the said criminal case. It is stated that the petitioner was acquitted in the criminal case vide judgment dated 09-01-2003. Thereafter, the petitioner made a representation dated 11-03-2003 to the respondents
2 and 3 requesting to allow him to discharge his duties. Pending the same, the impugned show cause notice, dated 21-05-2003, is passed calling upon the petitioner to show cause, within seven days from the date of receipt of that notice, as to why his name shall not be deleted from the approved list/select list on the ground that he produced non-genuine certificate of SSC. The petitioner submitted his explanation on 03-06-2003 denying the allegation levelled in the show cause notice.

Though the petitioner has submitted his explanation, no orders have been passed and he is not being allowed to discharge his duties. Aggrieved by the same, the present writ petition is filed.

A counter affidavit has been filed by the respondents denying that the petitioner was selected on 20-07-1993 and stated that he was appointed as a daily wage conductor vide proceedings dated 18-03-1998 with effect from 20-07-1998 and he was disengaged from time to time. It is also stated that the petitioner was initially appointed on the strength of SSC marks, which was cancelled as non-genuine. When his SSC certificate was cancelled, he is not eligible for the post of conductor as per the Rules in force.

It is also stated that the petitioner has filed an I.D.No.49 of 2003 before the Labour Court-II Hyderabad praying to reinstate him into service with effect from 03-03-2000 duly granting all other consequential benefits such as continuity of service, back wage etc., and no final orders have been passed so far.

The learned counsel appearing for the petitioner contended that the second respondent is not the competent authority to issue the impugned show cause notice and it is for the third respondent-Depot Manager to issue the show cause notice. Hence, he prays to set aside the same.

A specific plea has been raised by the petitioner in the affidavit stating that the impugned show cause notice issued by the second respondent is without jurisdiction and he is not the appointing authority for the post of Conductor.

Even in the counter affidavit filed by the respondents, it is not specifically stated that who is the competent authority to issue show cause notice and whether the second respondent has got jurisdiction to initiate disciplinary proceedings.

As per the powers delegated under the Rules of the Employees

(Classification, Control & Appeals) Regulations 1967, in respect of Conductors, Junior Scale Officer, the Depot Manager is the disciplinary authority, who can take disciplinary action.

In these Regulations, the second respondent is not the competent authority to initiate disciplinary proceedings. The respondents have failed to plead in the counter that the second respondent-Personal Officer is the competent authority to issue show cause notice or to initiate disciplinary action against the Conductors.

Therefore, *prima facie*, the order under challenge suffers from very serious legal infirmity as the second respondent-Personal Officer, Nizamabad, has no jurisdiction to issue or initiate disciplinary action against the petitioner and it has to be set aside. Therefore, the impugned proceedings dated 21-05-2003 are without jurisdiction and hence the same is set aside.

In the result, the writ petition is allowed. However, this order will not preclude the respondents in taking appropriate decision by the appropriate disciplinary authority in accordance with said Regulations. No order as to costs.

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K.C. BHANU, J

Dated: 21-06-2005

LSK

Rule is made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Tuesday twenty first day of June, two thousand and five.

To

1 The Managing Director, APSRTC, Musheerabad, Hyderabad
2 The Personnel Officer, APSRTC, O/o. Regional Manager Office, (NR), Nizamabad
3 The Depot Manager, APSRTC, Bus Depot, kamareddy, Nizamabad District

4 Two C.D. copies.